



September 18, 2002

Mr. David P. Hansen
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite 100
Austin, Texas 78727

OR2002-5255

Dear Mr. Hansen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168787.

The Kingsville Independent School District (the "district"), which you represent, received a request for copies of "conversation between Board & Cinda Alvarado (small cassette tape) of parent grievance." You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim.

We note at the outset that the district failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body that requests an attorney general decision concerning a request for information must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the written request for information and a signed statement as to the date on which the written request was received by the governmental body or evidence sufficient to establish that date. *See* Gov't Code § 552.301(e)(1)(B), (C). We note that the district failed to provide us with this particular information within fifteen business days of receiving the request.

When a governmental body fails to comply with the procedural requirements of section 552.301 of the Government Code, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is a demonstration that some other source of law makes the requested information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Since the district claims that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code, we address the district's claim.

You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.¹ Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). We note that section 551.146 penalizes the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting as a Class B misdemeanor and makes the person responsible for disclosure liable for damages to a person injured or damaged by the disclosure. *See* Gov't Code § 551.146. We also note that such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Furthermore, the attorney general lacks the authority to review such information to determine whether a governmental body may withhold such information from disclosure under the statutory predecessor to section 552.101 of the Government Code. *See id.* Therefore, the Open Meetings Act prohibits the submission of such information to this office for review.

You state that the information at issue relates to a closed meeting that was held under the authority of section 551.074 of the Government Code and that no court order has been issued with respect to the public inspection and copying of the requested information. Accordingly, we conclude that the district must withhold the requested information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹ Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168787

cc: requestor
c/o Mr. David P. Hansen
Schwartz & Eichelbaum, P.C.